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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

CRIMINAL APPEAL NO. 636 OF 2001

APPELLANT : Dhaniram S/o Mukut Sen
(IN JAIL) aged about 22 years
R/o Ganood, P.S. Mandirhasod
District - Raipur (C.G.)

Vs.

RESPONDENT : State of Chhattisgarh.

CRIMINAL APPEAL U/S 374(2) OF CODE OF CRIMINAL PROCEDURE



आदेश पत्रक

मामला क्रमांक Cr.A.No-636/01 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	SB: HON'BLE SHRI DHIRENDRA MISHRA, J. <u>APPLICANT</u> Dhaniram, son of Mukut Sen, aged about 22 years, R/o Ganood, P.S. Mandirhasod, District - Raipur (CG) <u>RESPONDENT</u> Vs. State of Chhattisgarh <u>20-9-2007</u> Shri Alok Pandey, Advocate for the appellant. Shri Sanjay Ku. Agrawal, Panel Lawyer for the State. 2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 18-7-2001 passed in S.T. No. 186/2000 whereby learned 7th Additional Sessions Judge, Raipur has convicted the appellant under Sections 363, 366 and 376 of I.P.C. and sentenced him to undergo R.I. for 3 years for offence under Section 366 and R. I. for 7 years for offence under Section 376 of I.P.C., however no sentence has been imposed for offence under Section 363 of I.P.C. 3. Case of the prosecution, in brief, is that on 1/4/2000 when the prosecutrix who is student of Class-Vth aged about 12-13 year was alone in her house, the accused came to her house and started dragging her and eloped with her promising that he would marry her. Firstly they went to Raipur by bus and thereafter they went to Bilaspur by train where the appellant kept the prosecutrix in a rented house as his wife and committed sexual intercourse with her. Missing report of Ex. P-8 was lodged by father of the prosecutrix P.W. 3	

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	Sukhnandan. During investigation, the prosecutrix was recovered on 12-4-2000 from Bilaspur from the custody of the present appellant vide recovery memo of Ex. P-6. The certificate of Primary School, Ganod of Ex. P-1 and Progress Report of Ex. P-2 pertaining to the prosecutrix were seized during investigation. Admission register wherein the name of the prosecutrix is entered at Sr. No. 2546 was also seized vide Ex. P-3. After recovery of the prosecutrix, F.I.R. of Ex. P-9 was registered on 13-4-2000 for offence under Sections 363, 366 and 376 of I.P.C. The prosecutrix was sent for medical examination to Urban Family Welfare Centre, Kalibadi where Dr. Usha Gupta (P.W. 13) examined the prosecutrix and gave her report of Ex. P-14. 4. During trial, the prosecution examined 13 witnesses. The appellant in his statement under Section 313 of Cr.P.C. pleaded innocence and false implication. However, learned trial Court after hearing the learned counsel for the parties, convicted and sentenced the appellant as mentioned above. 5. Learned counsel for the appellant submits that it is evident from the evidence available on record that the prosecutrix was a consenting party as she accompanied the accused of her own freewill in a bus upto Raipur and thereafter she accompanied him to Bilaspur. Referring to the statement of P.W. 6 Salikram Sahu, it was argued that she was, in fact, sitting alone and she was not in company of the accused while she traveled to Raipur. This is also indicative of the fact that she went to Raipur of her own freewill.	

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	Extensively referring to the statement of the prosecutrix, it was argued that she traveled with the accused from place to place and also wrote various letters from Ex. D-2 to Ex. D-4 from perusal of which it is apparent that the prosecutrix was in love with the appellant. 6. On the other hand, learned counsel for the State has supported the impugned judgment. 7. I have heard learned counsel for the parties. I have perused the record of the trial Court as also the impugned judgment. 8. So far as the age of the prosecutrix is concerned, to establish the age of the prosecutrix, the prosecution has produced Primary School certificate of Ex. P-1, Progress Report of Ex. P-2 and Admission register of Ex. P-3 wherein the age of the prosecutrix is mentioned as 17-7-1990 and on the basis of above certificate, the age of the prosecutrix comes to less than 10 years on the date of incident, however, the trial Court on the basis of the statement of father as also on the basis of the document of Ex. D-6 filed by the defence has assessed the age of the prosecutrix at 15 years and 3 months. This has not been disputed by the learned counsel for the appellant. 9. Learned trial Court after appreciating the evidence available on record, particularly the statement of the prosecutrix and other attending circumstances, has held in para 16 of the judgment that the prosecutrix was a consenting party however, considering the age of the prosecutrix which has been established to be less than 16	

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P1	years, it has been further held that the consent, if any, of the prosecutrix was of no consequence as she belongs to lower status of the society and was not in a position to understand about her own welfare and with these findings, the appellant has been convicted under Sections 363, 366, 376 of I.P.C. The reasons assigned for convicting the appellant in the impugned judgment that in the social background and age of the prosecutrix, her consent is irrelevant, is just and proper. In the facts and circumstances of the case, the conviction and the sentence imposed upon the appellant under the aforesaid sections do not call for any interference. 10. In the result, the appeal being devoid of substance, is liable to be dismissed and it is accordingly dismissed.	Sd/- DHIRENDRA MISHRA Judge

[पीछे देखिये]